

THE HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WYZE LABS, INC.,

Plaintiff,

v.

BEIJING ROCKROBO TECHNOLOGY CO.,  
LTD., and BEIJING XIAOMI MOBILE  
SOFTWARE CO., LTD.,

Defendants.

Case No. 2:21-cv-00941-RAJ

**PLAINTIFF’S RESPONSE TO MINUTE  
ORDER TO SHOW CAUSE**

**I. INTRODUCTION**

Plaintiff Wyze Labs, Inc. (“Wyze”) respectfully responds to the Court’s Minute Order to Show Cause why this matter should not be dismissed for failure to prosecute. Dkt. No. 10. There is no basis for dismissing this matter at this time. Both Defendants are foreign corporations based in China (Dkt. No. 1, ¶¶ 4–5), and the ninety-day deadline for service does not apply. *See* Fed. R. Civ. P. 4(m). Wyze has been diligently prosecuting this action and the Parties are in active settlement discussions. Wyze has requested a waiver of service from both Defendants but has not yet obtained such a waiver. Wyze should be allowed time to obtain a waiver of service from Defendants or, if such waiver is not provided, to seek formal service via the Hague Convention.

## II. BACKGROUND

Defendant Beijing Rockrobo Technology Co. Ltd. (“Rockrobo”) and Defendant Beijing Xiaomi Mobile Software Co., Ltd. (“Xiaomi”) (collectively, “Defendants”) are both foreign corporations based in China. Dkt. No. 1. ¶¶ 4–5; Decl. of Michelle M. (Umberger) Kemp (“Kemp Decl.”), ¶ 2. On July 15, 2021, Wyze filed this action seeking a declaratory judgment of invalidity and non-infringement of U.S. Patent No. 10,271,699. Dkt. No. 1. ¶ 1; Kemp Decl. ¶ 2. Shortly thereafter, on July 20, 2021, Wyze sent both Defendants a notice and request for waiver of service pursuant to Fed. R. Civ. Pro 4(d). Kemp Decl., ¶ 3; Kemp Decl., Exs. 1 & 2. The Parties have been in active settlement negotiations since the suit was filed. Kemp Decl. ¶ 4. Wyze has reiterated its request for Defendants to waive formal service of process and understands that Defendants are still considering the request. *Id.* ¶ 5. On Tuesday, November 23, 2021, Wyze was informed that Defendants Xiaomi and Rockrobo have still not made a decision on waiving service. *Id.*

## III. ARGUMENT

Federal Rule of Civil Procedure 4(m) generally requires service of process within ninety days of filing of the Complaint, but that rule “does not apply to service in a foreign country under Rule . . . 4(h)(2) . . .” Fed. R. Civ. P. 4(m); *see also* Fed. R. Civ. P. 4(h)(2) (governing service on a foreign corporation at a place not within any judicial district of the United States); *Ilyia v. El Khoury*, No. C11-1593RSL, 2012 WL 3065284, at \*1 (W.D. Wash. July 27, 2012) (recognizing that the “time limit for service imposed by Rule 4(m) does not apply to service in a foreign country”).

Federal Rule of Civil Procedure 4(d) further emphasizes that defendants subject to service have “a duty to avoid unnecessary expenses of serving the summons,” and Wyze sent both Defendants notice and requests for waiver of service to avoid the unnecessary cost and delay that would result from seeking formal service in China under the Hague Convention. Kemp Decl., ¶¶ 5–6; Kemp Decl., Exs. 1 & 2. Pursuant to Rule 4(d)(1)(F), Wyze was required to allow at least 60 days for Defendants to respond to its request for waiver of service. Kemp Decl., ¶¶ 5–6. Since then, the Parties have been engaged in active settlement discussions, and Wyze understands that Defendants are still considering Wyze’s request for

1 waiver of service. *Id.* ¶¶ 4, 6. The night before filing this Response, Wyze was informed that  
 2 Defendants have still not made a decision on waiving service. *Id.* ¶ 6. If the case does not settle and  
 3 Defendants do not waive service by December 31, 2021, Wyze is prepared to and will seek formal  
 4 service under the Hague Convention. *Id.* ¶ 7. Defendant Rockrobo’s U.S.-based counsel has been  
 5 provided with a copy of this Response and supporting declaration. *Id.* ¶ 8.

6 Wyze has been actively prosecuting this action, and the ninety-day deadline for service under  
 7 Fed. R. Civ. P. 4(m) does not apply, so there is no basis for dismissing this action for failure to prosecute.  
 8 *See, e.g., Whitworth Park, LLC v. City of Bellingham*, No. C10-1419-JCC, 2012 WL 366968, at \*1  
 9 (W.D. Wash. Feb. 3, 2012) (“dismissal for failure to prosecute ‘is a harsh penalty and is to be imposed  
 10 only in extreme circumstances’”), *quoting Malone v. United States Postal Service*, 833 F.2d 128, 130  
 11 (9th Cir. 1987). Wyze should be allowed time to obtain a waiver of service from Defendants or, if  
 12 necessary, seek formal service via the Hague Convention.

#### 13 IV. CONCLUSION

14 There is no basis for dismissing the case at this time, as Wyze has been actively prosecuting this  
 15 action and the deadline for service of process in Fed. R. Civ. P. 4(m) does not apply.

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1 Dated: November 24, 2021.

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